

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES SCOTT,

Plaintiff,

v.

JANET A. NAPOLITANO,
SECRETARY, DEPARTMENT OF
HOMELAND SECURITY,

Defendant.

Case No. 08cv735 BTM(JMA)

**ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO REDUCE
DAMAGES AWARD**

The United States has filed a motion to reduce the jury's award of compensatory damages in the amount of \$1,100,000 to the \$300,000 cap mandated by statute. Plaintiff's compensatory damages are capped at \$300,000 by 42 U.S.C. § 1981a(b)(3)(D). Therefore, the Court grants the United States' motion to reduce the jury's award to \$300,000.

The United States also moves to further reduce the award to an amount between \$5,000 and \$100,000 on the ground that \$300,000 is speculative and grossly excessive in light of the evidence Plaintiff presented at trial. The Court may reverse the jury's finding of the amount of damages only if the "amount is grossly excessive or monstrous." Lambert v. Ackerley, 180 F.3d 997, 1011 (9th Cir. 1999) (en banc). The Ninth Circuit does not require that objective evidence of emotional distress be presented, and a plaintiff's testimony alone can be

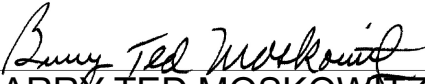
1 sufficient to substantiate a jury's award of emotional distress. Zhang v.
2 American Gem Seafoods, Inc., 339 F.3d 1020 (9th Cir. 2003). In Zhang, the
3 Ninth Circuit held that an award of compensatory damages, whether in the
4 amount of \$223,155 or \$123,155, was supported by the evidence where the
5 plaintiff testified that after he was terminated, he was very hurt and troubled by
6 the termination and the damage to his dignity and reputation. Id. at 1040-41.
7 See also Casumpang v. Int'l Longshore & Warehouse Union, Local 142, 411
8 F. Supp. 2d 1201, 1217-18 (D. Haw. 2005) (refusing to reduce compensatory
9 damage award in the amount of \$240,000 where the plaintiff testified that as
10 a result of his suspension and fine, he was ashamed and embarrassed, felt
11 unhappy about missing time with his children while working a second job and
12 about his inability to send his children to college, lost sleep, lost his sexual
13 appetite, aggravated his high blood pressure, and gained weight); Ward v.
14 Sorrento Lactalis, Inc., 2005 WL 4021366, at *4-5 (D. Idaho Dec. 22, 2005)
15 (denying motion to reduce award below \$300,000 statutory cap because the
16 plaintiff testified that after his termination, he could no longer afford his home
17 and his car was repossessed); Velez v. Roche, 335 F. Supp. 2d 1022, 1038-41
18 (N.D. Cal. 2004) (denying motion to reduce award below \$300,000 statutory
19 cap in light of plaintiff's testimony and the testimony of her husband that she
20 became depressed, could not sleep, lost interest in her children and hobbies,
21 and could barely get anything done).

22 In this case, Mr. Scott, Mrs. Scott, and Mr. Ballestros testified regarding
23 the hurt, embarrassment, and depression Mr. Scott experienced as a result of
24 his termination. The jury heard this evidence and determined that an award of
25 \$1,100,000 was just compensation for Mr. Scott's emotional injuries. Although
26 the jury's award must be reduced to \$300,000, the Court finds no basis for
27 reducing the award any further. In light of the trial testimony regarding the
28 emotional distress Mr. Scott suffered, an award of \$300,000 is not "grossly

1 excessive" or "monstrous."¹ Therefore, the Court denies the United States'
2 motion to reduce the jury's award below \$300,000.

3 **IT IS SO ORDERED.**

4 DATED: September 9, 2013

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6 BARRY TED MOSKOWITZ, Chief Judge
7 United States District Court
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25 ¹ Even if, as the United States argues, Mr. Scott cannot recover emotional distress
26 damages after he obtained a job as a law enforcement officer at Camp Pendleton, about a
27 year and a half after his termination, the Court cannot conclude that a year and a half of
28 emotional suffering is worth less than \$300,000. See, e.g., Arevalo v. Oregon Dep't of Motor
Vehicles, 208 F. Supp. 2d 1160, 1165 (D. Or. March 26, 2002) (denying motion to reduce
compensatory damage award of \$250,000 because the jury could have found that the
plaintiff experienced significant distress and humiliation for more than a year as a result of
DMV's discriminatory conduct).